HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 6476 of 2001 (S/S)
(Old No. 4238 of 1993)
Ganesh Prasad &ors.
Vs

State of U.P. & ors.

Approved for reporting.

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Not approved for reporting

Date of decision 17.5.2000

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION NO. 6476 (S/S) OF 2001
(Old No. 4238 of 1993)

1. Ganesh Prasad Deorani, aged about 34 yeards, son of late Shri Raja Ram Deorani, Lipik Garhwal Regional Office, Uttaranchal Vikas Vibhag, Shri Nagar Garhwal.
2. Dinesh Chandra Bhatt, aged about 26 years, son of Shri Mitra Nand Bhatt, Lipik Garhwal Rogional Office, Uttaranchal Vikas Vibhag, Shri Nagar Garhwal.
3. Harsh Mani Bhatt, aged about 25 years, son of Shri Mitra Nand Bhatt, Class IV employee, Garhwal Regional Office, Uttaranchal Vikas Vibhag, Shri Nagar Garhwal.

.....Petitioners.

versus

1. State of U.P., through Principal Secretary, Government of Uttar Pradesh, Uttaranchal Vikas Vibhag, Vikas Bhawan, Lucknow, U.P.
2. Sanyukt Sachiv, Uttar Pradesh Shasan, Uttaranchal Vikas Vibhag, Garhwal Chhetriya Krayalaya, Shri Nagar Garhwal.
3. Vishesh Karyadhikari, Uttar Predesh Shasan, Parvatiya Vikas Anubhag-4, Lucknow. .....Respondents.

Dated: 17.05.2005

Hon'ble Rajesh Tandon, J.

Heard learned counsel for both the parties.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the impugned order of termination dated 12.05.1993 issued by the respondent no. 2 and the Radiogram No. 267/28 Prashasan-Cell dated 23.03.1993 and Radiogram No. 749-/28 Prashasan Cell dated 27.04.193 issued by the State Government. Further the petitioner has prayed for a writ of mandamus commanding the respondents to regularize the services of the petitioners no. 1 and 2 against class III posts and that of petitioner no. 3 against Class IV posts. Further the

petitioner has prayed for a writ of mandamus commanding the respondents to pay the entire service emoluments including pay, promotion etc., which may have accrued to the petitioners.

Briefly stated, the petitioners were initially appointed vide order dated 5.12.1989 issued by the respondent no. 3 on daily-wages. The petitioner nos. 1 and 2 were appointed on the post of 'Lipik' in Class III whereas petitioner no. 3 was appointed on Class IV post with the Parvatiya Vikas Vibhag, which was subsequently designated as Uttaranchal Vikas Vibhag and the appointment was to continue till regular appointment was made in the said 'Vibhag'.

In pursuance of the appointment letter, the petitioner no. 1 joined his duties with the Garhwal Regional Office, Shri Nagar, Garhwal on 26.12.1989, whereas, petitioner nos. 2 and 3 joined their duties on 12.01.1990, with the aforesaid office at Shri Nagar.

At the initial stage, petitioners no. 1 and 2 were being given Rs. 20/- as daily wages which was subsequently enhanced to Rs. 30/- per day and the petitioner no. 3 who was being initially given Rs. 15/- (Fifteen) per day was subsequently given Rs. 25/- per day as daily wages.

Learned counsel for the petitioner has submitted that since the date of joining, the petitioners have been working with utmost sincerity and ability and to the complete satisfaction of their superior authorities and more over there is nothing adverse against them in the service record.

Learned counsel for the petitioner has submitted that Service Rules governing the service conditions of the petitioners have not yet been issued by the State Government and more over no regular appointment has been made by the respondents on Class III and Class IV posts.

In has further been submitted that during the financial year 1’ 992-93, one post of Personal Assistant and Upper Division Assistant, each was lying vacant in spite of the fact that the said posts had already been sanctioned by the State Government, which belong to Class III. One post of peon, Chowkidar, Patra Vahak etc. in Class IV which have already been sanctioned by the State Govt. lay vacant for want of regular appointment.

It has been submitted that the petitioners no. 1 and 2 possess the requisite qualification for being given a regular appointment against the Class III posts of Personal Assistant and Upper Division Assistant. Petitioners have already put in more than three years of continuous service as a daily wager with the aforesaid department.

Petitioners no. 3 also fulfills the requisite qualification for being appointed against one of the Class IV post as he has also put in ore than three years of continuous service on daily wages basis.

The petitioners were initially appointed vide order dated 5.12.1989 issued by the Vishesh Karyadhikari (Respondent No. 3) and as such the termination order issued by the respondent no. 2 is totally without jurisdiction in as much as Vishesh Karyadhikari and Sanyukta Sachiv are two different Authorities and more over the power of termination has also not been delegated by Vishesh Karyadhikari to the Sanyukt Sachiv.

It has further been submitted that in the matter of regularization of the services of the daily wages employees, the State Government issued a circular dt. 09.10.1991 directing therein that various formalities for regularization of daily wages

employees be completed at the earliest so that regularization be carried out.

Learned counsel for the petitioner has submitted that the Hon'ble High Court of Uttar Pradesh while deciding Writ Petition No. 6496 of 1990 vide its judgment and order dated 18.03.1991 directed the regularization of all such daily wagers who had been working for more than a year with the Vibhag and in pursuance of the said judgment the State Government issued a Government order for the purpose of regularization of the aforesaid daily wages employees.

Further in pursuance of the aforesaid judgment of the Hon'ble High Court and the various letters and circulars issued by the State Government from time to time in respect of the regularization of daily wage employee, the Research Officer of the said Vibhag vide his letter dt. 31st July, 1991 made on behalf of the respondent no. 2 and issued to the State Government requested therein that the services of the petitioners working on daily wages be regularized and in that regard necessary orders be made.

On 23.10.1991, the Research Officer of the said Vibhag again issued a letter dt. 23.10.1991 to the respondent no. 1 requesting therein that necessary action for regularizing the services of the petitioners be taken so that regular working in the Vibhag may not suffer on this account.

Learned counsel for the petitioner has submitted that the respondent no. 2 vide his letter dated 6th June, 1992 informed the respondent no. 1 stating therein that the posts of Personal Assistant and Upper Division Assistant in Class III are vacant and since petitioners no. 1 and 2 have been working in the said Vibhag w.e.f. 26.12.1989 and 12.01.1990 respectively are entitled for consideration for regular appointment against the

said posts and petitioner no. 3 who is working in the said Vibhag w.e.f 12.01.1990 on daily wages is also entitled for being considered for regularization against one of the vacant posts in Class. IV.

In spite of a number of letters issued from time to time regarding regularization of the services of the petitioners, no positive action in this regard was carried out by the respondents.

Being aggrieved, the petitioners filed a joint representation dated 30.05.1992 and another dated 04.04.1993 to respondent no. 1 (State Govt.) requesting therein that their services be regularized on the vacant posts.

Instead of upholding the claim of the regularization of services of the petitioners, the respondent no. 2 terminated the services of the petitioner vide order dated 12.05.1993.

It has been submitted by the petitioners that after the termination of their services, the authorities of the said Vibhag are interested in making fresh appointments on daily wages so that their services could be regularized in due course of time.

In view of the above, writ petition is allowed and respondents are directed to allow the petitioners no. 1 and 2 to continue on the Class III posts and petitioners no. 3 to continue on the Class IV post and consider their regularization on the aforesaid posts in accordance with Group-C Rules. No order as to costs.

(Rajesh Tandon, J.)

Dated: 17.05.2005

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